

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL
VILLAGE OF CHAGRIN FALLS, OHIO

3844

IN RE: VARIANCE REQUEST OF)
RIVERWALK DEVELOPMENT)
CORP. FOR PROPERTY LOCATED)
AT PERMANENT PARCEL NOS.)
931-12-018 AND 019)

FINAL ORDER OF COUNCIL
AND CONCLUSIONS OF FACT

ADMINISTRATIVE ORDER
NO. 2014- 82

This matter is before the Council of the Village of Chagrin Falls pursuant to the request of Riverwalk Development Corp. ("the Applicant"). The Applicant owns the properties recorded as permanent parcel numbers 931-12-018 and 019 ("the Subject Property"). The Applicant has requested variances from Section 1125.03(c), 1125.03(f) and 1125.04(b)(3) of the Village of Chagrin Falls Codified Ordinances to permit the construction of two single family residential structures on the Subject Property in zoning district R2F.

The Riverwalk Development received variances in October 2009 for building height, hillside disturbed area, lot coverage, driveway coverage, shared driveway and rear setbacks and again, in March 2013. The Board of Zoning Appeals made geotechnical investigations a condition of the variances to protect surrounding property owners. Phase I consisting of three two-family buildings has been constructed and a single family dwelling on parcel 931-12-020 is currently under construction.

The Subject Property has been designed in part to meet the Village's engineering requirements for Factor of Safety and to provide a retaining wall requested by adjacent property owners. The developer is now proposing two single-family units where three duplex units had originally been planned.

The variances requested by the Applicant are as follows:

Under Section 1125.03(j), the height of a dwelling is limited to thirty-five feet (35'). The proposed maximum height of the structures is forty-six feet (46').

Under 1125.03(f), the required front yard is thirty feet (30'). Unit #48 has a proposed front yard depth of twenty eight feet (28').

Under 1125.03©, the code requires street frontage of fifty feet (50'). Unit #46 has a proposed frontage of forty seven and one half foot (47.5').

Under 1125.04(b)(3), driveway coverage of the front yard is limited to twenty-five percent (25%). Units #46 and #48 have driveway coverages of sixty six percent (66%).

The Village of Chagrin Falls Board of Zoning Appeals met on December 2, 2014. The Board received evidence and testimony and heard the arguments of the Applicant, opponents, and concerned residents. The Board of Zoning Appeals, on a vote of 3-0 recommended that Council grant the requested variances.

This Council met on December 8, 2014 and considered the matter upon the record created by the Board of Zoning Appeals. This Order and the Conclusions of Fact are predicated upon all of the evidence and testimony on the record before Council and, in consideration thereof, the following conclusions of fact are made:

1) The Subject Property slopes steeply downward from the northwest corner to the southeast corner, and this unique topography presents a practical difficulty when attempting to develop the property in compliance with the zoning code. The Applicant will submit engineering designs to the Village Engineer for all slope stabilization improvements. Final engineering approval will be required before permits are issued.

2) The Board of Zoning Appeals noted that the site plan has been redesigned to provide room for slope retention structures that meet the Village's engineering requirements and requests by neighbors for a retaining wall. It was also noted that the proposed buildings are smaller in footprint and height than the previous design for which similar variances were approved and, thus, the variances sought are smaller in size and scale than those sought under the prior plan.

3) The Applicant testified that its geotechnical engineer performed extensive soil borings and analysis. Additional information has been gathered while excavating the parcel at 47 West Cottage and excavating to install the retaining wall behind unit #44 that is under construction. Based on all the data collected, the Applicant's engineer will design the retaining wall to create an improved slope factor of safety to at least 1.3 where original conditions had a factor of safety of 1.0. The Village Engineer has previously testified that a factor of safety of 1.3 can reasonably be achieved and is acceptable.

4) The Applicant testified that development of the Subject Property as proposed is necessary in order for it to be economically feasible to build the proposed retaining wall to a factor of safety of 1.3. The Applicant said if the variances are not granted the lots will not be developed.

5) With respect to the height variances, the Board of Zoning Appeals found that due to the topography of the Subject Property, the basement of each unit is included in the height calculation which is not a customary circumstance and, the proposed units match the height of the existing units on the Subject Property. It was noted that the slope of West Orange Street closely matches the slope of West Cottage Street.

6) With respect to the lot width variance for Unit #46, the Board of Zoning Appeals found that it is necessary to reduce the lot width to allow adequate room along the west property line for the heavy equipment needed to construct the retaining wall.

7) With respect to the front yard variance for Unit #48, the Board of Zoning Appeals found that due to the retaining wall, Unit #48 is pushed towards the road. It was noted that the majority of the front wall meets the setback requirement and it was the request of the Architectural Board to provide some fenestration that resulted in the need for a two foot variance.

8) With respect to the driveway coverage variances for Unit # 46 and 48, the Board of Zoning Appeals found that while the percentage of the variances seems substantial, the variances are necessitated by the fact cars will need to turn around prior to exiting the property. The Board of Zoning Appeals further found that the variances are not substantial because the existing conditions at the Subject Property present challenges to any development, and the proposed plan reduces the size and scope of the variances previously approved. Additionally, granting the variances will allow for the completion of the development plan for this site.

9) The Board of Zoning Appeals found that the Subject Property does not yield a reasonable return without the variance because the Applicant testified that if the variances are not granted, the lots will remain undeveloped and the slope factor of safety will not be improved.

10) The Board of Zoning Appeals found that the character of the neighborhood will not be adversely affected by the proposed development, and the benefit to the property owner and the neighborhood by the completion of these dwellings and associated retaining wall exceeds the cumulative impact of the variances.

11) The Board of Zoning Appeals found that the variances will not negatively affect the delivery of governmental services and, in fact, each driveway will provide adequate access and space for vehicles to turn around.

12) The Board of Zoning Appeals found that the Applicant's predicament cannot feasibly be obviated through some means other than a variance because the Applicant testified that reducing the size of the dwellings would make the installation of the retaining wall economically unfeasible.

13) The Board of Zoning Appeals found that the circumstances for granting the variances are to a certain extent self-created, but acknowledged that the Subject Property is unique.

14) The concerns of the neighbors were heard by the Board of Zoning Appeals and discussed, and this Council is persuaded that no harm will result to the neighborhood if the variances are granted and the adjacent property owners will benefit from the increased slope stability factor provided by the retaining wall system.

15) This Council notes the Board's findings that the variances proposed are substantially similar to, or less than, previous variances approved for development on the Subject Property on three separate occasions.

16) This Council finds that the Applicant has demonstrated practical difficulties in the use of the Subject Property, which are a result of the strict application of the height ordinance. The steep slope to the front of the property results in a high front elevation, where the measurement is taken, in relation to the overall height of the building. The neighbors' views will be substantially maintained by virtue of their relative height above the proposed development. This Council confirms the finding of the Board of Zoning Appeals. Accordingly, this Council concludes that the Applicant has established that there are exceptional circumstances which distinguish the Applicant from other property owners who are, or have been, required to comply with the regulation as written.

17) This Council finds that the Applicant has demonstrated practical difficulty in the use of the property which are a result of the strict application of the driveway coverage ordinance. A turnaround in each driveway, which requires additional pavement, is necessary to ensure that vehicles entering the property can safely exit the property onto West Orange Street. Accordingly, this Council concludes that the Applicant has established that there are exceptional circumstances which distinguish the Applicant from other property owners who are, or have been, required to comply with the regulation as written.

18) This Council finds that the Applicant has demonstrated practical difficulty in the use of the property which is a result of the strict application of the street frontage minimum ordinance. It was the request of the Architectural Board to provide some fenestration on Unit #48 that resulted in the need for a two-foot variance. Accordingly, this Council concludes that the Applicant has established that there are exceptional circumstances which distinguish the Applicant from other property owners who are, or have been, required to comply with the regulation as written.

19) This Council finds that the Applicant has demonstrated practical difficulty in the use of the property which is a result of the strict application of the front yard depth ordinance. It is necessary to reduce the lot width for Unit #46 to allow adequate room along the west property line for the heavy equipment needed to construct the retaining wall. Accordingly, this Council concludes that the Applicant has established that there are exceptional circumstances which distinguish the Applicant from other property owners who are, or have been, required to comply with the regulation as written.


WHEREFORE, IT IS ORDERED, that the variances from Sections 1125.03©, 1125.03(f) and 1125.04(b)(3) of the Village of Chagrin Falls Codified Ordinances requested by the Applicant, the plans for which are on file with the Building Commissioner, be and are hereby granted. The Applicant may construct the proposed residential structures in accordance with the proposed plans. This document is deemed by Council to be the final order in this matter.

IT IS FURTHER ORDERED, that the Clerk of Council shall mail a copy of this Final Order of Council and Conclusions of Fact to the Applicant, and any other parties requesting same, by first class mail, and note the mailing date upon this order. The decision of this Council shall be deemed final upon the date the Clerk mails this document, as provided herein.


Adopted this 8th day of December, 2014, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

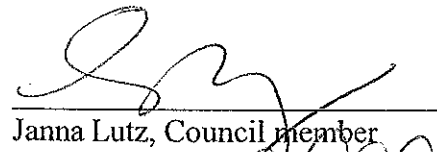
VILLAGE OF CHAGRIN FALLS COUNCIL

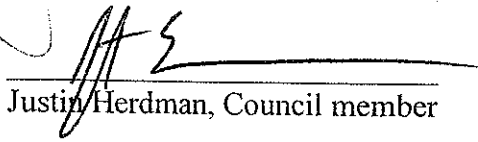
Steven Patton, President of Council

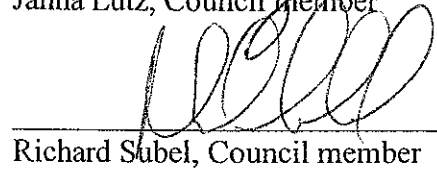


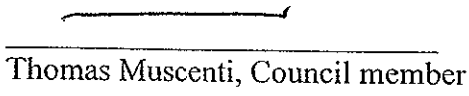
Janis Evans, Council member


James Newell, Council member

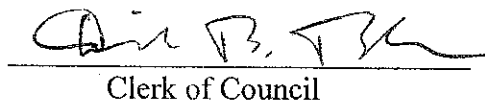

Janna Lutz, Council member


Justin Herdman, Council member


Richard Subel, Council member


Thomas Muscenti, Council member

Notice mailed this 28 day of January, 2015.


Clerk of Council